

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Democratic-Farmer-Labor Party,
Complainant,

vs.

Minnesota Senate Republican Caucus, Senator
David Senjem, Senator Al DeKruif, Senator
Chris Gerlach, Senator Gretchen Hoffman,
Senator Benjamin Kruse, Senator Ted Lillie,
Senator Claire Robling, Senator Ray Vandever,
Senator Pam Wolf, Senator Michelle Fischbach,
Senator John Pederson, and Steve Sviggum,
Respondents.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

The above-entitled matter came on for an evidentiary hearing on August 7, 2012, before a panel of three Administrative Law Judges: Barbara L. Neilson (presiding judge), Timothy J. O'Malley, and Manuel J. Cervantes. The hearing record closed on August 17, 2012, with the filing of the Parties' reply briefs.

David J. Zoll, Attorney at Law, appeared on behalf of the Minnesota Democratic-Farmer-Labor Party (Complainant).

R. Reid LeBeau III, Attorney at Law, appeared on behalf of the Minnesota Senate Republican Caucus, the above-named Senators, and Steve Sviggum (Respondents).

STATEMENT OF THE ISSUES

1. Were the "Legislative Updates" distributed at the February 2012 Republican precinct caucuses campaign material within the meaning of Minnesota Statutes § 211B.01, subd. 2?

2. If so, did the Respondents violate Minn. Stat. § 211B.04(b) by failing to put a disclaimer on the Legislative Updates identifying who prepared and paid for them?

Based upon the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Minnesota Senate Republican Caucus (MNSRC) is an assumed name used by the Senate Victory Fund. The Senate Victory Fund is a political organization that raises money and works to elect Republican State Senators. MNSRC is separate and distinct from the Senate Republican Caucus, which is the official State legislative office staffed with State employees.¹

2. MNSRC or the Senate Victory Fund has one paid employee, Michael Campbell. Mr. Campbell is the Finance Director of the Senate Victory Fund. He writes and signs checks on behalf of the organization, but does not exercise authority over MNSRC's operations or expenditures. Rather, Senate Majority Leader David Senjem and Senators Michelle Fischbach and David Hann exercise control over MNSRC's expenditures and campaign activities.²

3. Respondent Steve Sviggum is the Communications Director of the Senate Republican Caucus. He is also a former member and Speaker of the Minnesota House of Representatives, and a former Commissioner of the Department of Labor and Industry.³

4. During the 2012 legislative session, the Executive Board of the Senate Republican Caucus and Mr. Sviggum met weekly via telephone conference to prepare for the upcoming week. During these conference calls, they would discuss issues, map out strategies, and set agendas. The members of the Executive Board include the six Assistant Majority Leaders (Senators David Senjem, Ted Lillie, Claire Robling, Michelle Fischbach, Bill Ingebrigtsen, and Dave Thompson) and three key staff members, including Mr. Sviggum.⁴

5. During one of the weekly telephone conference calls in late January 2012, one of the members of the Executive Board suggested that the Senate Republican Caucus's Communications Department prepare a literature piece that Republican Senators could hand out at the upcoming Republican precinct caucuses that would highlight the Republican Senators' accomplishments during the last session and communicate their positions on what the Republican Caucus considered to be the important issues of the day.⁵

6. After the telephone conference concluded, Mr. Sviggum drafted a "Senate GOP Legislative Update" (Legislative Update) for Republican Senators to bring to their precinct caucuses.⁶ The Update promoted the Senate Republican majority's legislative accomplishments in 2011, discussed proposed legislative initiatives for the 2012

¹ Testimony of Michael Campbell.

² Campbell Test.

³ Mr. Sviggum was a member of the House for 29 years and he was Speaker of the House for eight years.

⁴ Testimony of Steve Sviggum.

⁵ Sviggum Test.

⁶ Sviggum Test.


session, criticized the Democratic Governor, and thanked those attending the precinct caucuses for their involvement.⁷

7. On or about January 30, 2012, Mr. Sviggum gave his draft of the Update to a staff person in the Senate Republican Caucus Communications Department and directed her to format it and “make it look pretty” and “more official.”⁸

8. The staff person prepared the Legislative Update based on the text provided by Mr. Sviggum. The staff person did not testify. Consequently, her intent with respect to why she included the MNSRC logo and social media links or her knowledge of what these sites contained is unknown. The final product was a two-page document entitled “Legislative Update” that could be tailored to individual senators with their picture, name and contact information.⁹

9. In designing the piece, the Communications Department staff person also included the MNSRC logo and prominent links to MNSRC’s Facebook account, Twitter account, and website at the bottom of the Update under the statement: “We appreciate your involvement, and hope you will keep in touch!”¹⁰

10. An example of the two-page Legislative Update appears below:



2012 Session

SENATE GOP Legislative Update

First Budget Surplus Projection in 5 Years

Minnesota's Management and Budget Office announced a \$375 million surplus for the state in its November forecast. This is a great budget improvement from the \$5.2 billion deficit the Senate Republicans inherited in the 2011 Legislative Session. By making tough choices on the spending side of the budget, prioritizing the state's needs, providing regulatory reform and enhancing job growth – the Senate Republican majority delivered for Minnesota.

Performance is important and how we should be judged. The 2011 budget was set to grow to \$39 billion – the Governor presented a \$37.5 billion budget – and at the end of the unnecessary special session the Governor agreed to the Republican's \$34 billion budget! This was a win for the taxpayers of Minnesota – and obviously a win for the state's budget.

This budget surplus provides not only opportunities as we move ahead, but allows the 2012 Session to focus on needed government reforms and efficiency.

Redistricting to be unveiled on Feb 21st

The Constitution of Minnesota gives responsibility to the Legislature to redraw the legislative district lines every 10 years, after the census is taken. This is to get back to the Constitutional adage of “one person, one vote.”


In the 2011 Legislative Session, the Republican Senate and House met the redistricting responsibility only to have the bill vetoed by Governor Dayton. This unfortunate veto leaves the redistricting responsibility in the hands of the courts. They will unveil the new district lines on February 21.

All 134 House and 67 Senate Districts will be redrawn and all senators and representatives will be up for election on General Election Day, November 6.

THANK YOU
for joining this
Republican
precinct caucus!

Exhibit
A

Senator
RAY VANDEVEER



⁷ Ex. 1-11.

⁸ Test. Sviggum.

⁹ Test. Sviggum; Ex. 1-11.

¹⁰ *Id.*

Reform 2.0 to lead session policy

In 2011, the Senate and House majorities led the way to reduce government paperwork and bureaucratic delays in the permitting process. Governor Dayton joined Senate Republicans in the initiative that produced the bipartisan effort.

Now on to the second phase of redesign/reform – hence Reform 2.0. Government reform ideas abound and are the result of numerous outreach meetings to gather citizen input and direction. These redesign efforts are importantly about efficiency and cost control but as importantly “...getting the right services to the right people.”

More Constitutional Amendments coming?

During the 2011 Legislative Session, Senate Republicans successfully fought to allow the citizens of Minnesota to vote on the marriage amendment. No matter how Minnesotans feel individually on the issue, empowering their voice and vote is good, representative government. On the November 6th ballot, all citizens can have their voice directly heard on the important issue of marriage.

Additional constitutional amendments may be considered during this upcoming session. Photo ID for legal voting, a bipartisan redistricting commission, Freedom to Work, supermajority to raise taxes and other issues. The number of questions to be placed on the ballot is also strategically being discussed.

Jobs – Jobs – Jobs

The focus of almost every legislative action taken by Senate Republicans involves jobs and getting people to work. From the government reform issues mentioned above to holding the line on state spending to prioritized tax incentives for job creation – private sector jobs have been our focus. This session will provide many opportunities to make Minnesota a state that works – in many ways. Every bill that passes should be judged, not only on whether it is in the best interests of Minnesota, but if it makes Minnesota work.

We appreciate your involvement,
and hope you will keep in touch!



Facebook.com/MNSRC
Twitter.com/MNSRC
mnsrc.org



11. Mr. Sviggum did not direct the staff person to include the MNSRC logo or links to the MNSRC social media sites. Mr. Sviggum did not pay particular attention to the logo nor did he notice that the links were included on the Updates when he reviewed and approved the final version prior to the precinct caucuses.¹¹

12. At the time the Legislative Updates were prepared, the MNSRC website included pages soliciting contributions to the Senate Victory Fund and soliciting volunteers for “campaign opportunities.”¹²

13. Michael Campbell, the sole employee of the Senate Victory Fund, had no involvement in preparing the Legislative Updates. He did not authorize or support the use of the MNSRC logo, and was unaware that links to its website and social media accounts had been included in the Legislative Updates.¹³ Mr. Sviggum did not coordinate the preparation or dissemination of the Legislative Updates with Mr.

¹¹ Sviggum Test.

¹² Exs. 14 and 15; The web address for the MNSRC is: www.senatevictoryfund.com.

¹³ Ex. 12; Campbell Test.

Campbell; nor did any member of the Senate Republican Caucus's Communications Department coordinate the Updates with the Senate Victory Fund.¹⁴

14. The Senate Republican Caucus, the official State legislative office, does not have its own website, Facebook or Twitter accounts.

15. Mr. Sviggum directed an intern to contact all the Republican members of the Senate and determine which ones wanted to bring the Legislative Update to their precinct caucuses.¹⁵ All of the Respondent Senators identified in the caption of this case had a Legislative Update prepared for them and all of them distributed the Updates at their precinct caucus.¹⁶

16. Prior to printing the Legislative Updates, Mr. Sviggum brought the final version of the Update to Tom Bottern, Director of the Minnesota Senate Counsel. Mr. Bottern reviewed the Update and concluded that it did not violate Senate rules relating to prohibited campaign activity.¹⁷

17. A copy of the personalized Legislative Update was provided to each Republican Senator who requested one for their review prior to printing. A few of the testifying Respondent Senators¹⁸ made grammatical or stylistic edits to the text, but none paid attention to the MNSRC logo and social media links or made the effort to investigate where the MNSRC links would lead a reader.¹⁹

18. The three testifying Respondent Senators were aware of the Senate Victory Fund and the work it does to support the election of Republican candidates, but were not aware that the Senate Victory Fund uses "Minnesota Senate Republican Caucus" as an assumed name.²⁰ Before the Complaint in this matter was filed, Mr. Sviggum was unaware that the Senate Victory Fund also does business as MNSRC.²¹

19. The Legislative Updates were printed for each of the individual Republican Senators who requested one, and those Senators brought the Updates to their precinct caucuses.²²

20. Other than making a few edits to the text, the individual Senators named in this Complaint did not prepare the Legislative Updates or coordinate the Updates with

¹⁴ Sviggum Test.

¹⁵ Sviggum Test.

¹⁶ Robling, Wolf and Hoffman Test.

¹⁷ Sviggum Test.; Exs. 13 and 16; See Minnesota Senate Policy 1.45. (Senate Policy 1.45 defines certain campaign activities that are prohibited including "soliciting contributions to a political committee or political fund." The policy also provides a definition of activities that are not "campaign activity" including "legislative reports.")

¹⁸ See Stipulation dated July 27, 2012, wherein the parties agreed that the testimony provided by the three Senators at the evidentiary hearing would be applicable to the remaining Respondents.

¹⁹ Testimony of Senator Claire Robling.

²⁰ Testimony of Senator Robling, Senator Pam Wolf and Senator Gretchen Hoffman.

²¹ Sviggum Test.

²² Sviggum Test.

their campaign committees' efforts. The Senators did, however, disseminate the Updates at their precinct caucuses.²³

21. The Minnesota Legislature paid for the cost of printing the Legislative Updates, which was less than \$50.²⁴ That estimate for printing the Updates does not include State employee time or other resources used to create the Updates.

22. The Republican precinct caucuses were held on February 7, 2012.

23. Precinct caucuses are part of the election process.²⁵ Caucus attendees elect delegates to represent their precinct at the district convention. District convention delegates in turn elect delegates to the party's state convention and influence which candidates and policy positions their party endorses.

24. Although precinct caucuses are open to the public, they are overwhelmingly attended by individuals who self-identify as agreeing with principles espoused by the particular political party and who are likely to vote for that party's candidates. Members of the media, high-school students, and "observers" from the opposing political party may also be in attendance at precinct caucuses.²⁶

25. At the time of the precinct caucuses, which occurred before redistricting was finalized, not all of the Senators named as Respondents in this matter had decided whether they would seek re-election. The Senators attended their precinct caucuses in large part to meet with and provide information to constituents as the sitting Senator in their District.²⁷

26. Sometime after the precinct caucus, a reporter wrote about the links to the MNSRC website and social media accounts provided on the Legislative Updates. When Mr. Sviggum learned of the report, he went to the staff person who prepared the Update and asked her why she had included the links to MNSRC's sites. The staff person became upset and indicated that she had made a mistake.²⁸

27. On February 14, 2012, the Minnesota DFL filed this Campaign Complaint.

28. On February 15, 2012, Mr. Sviggum acknowledged to members of the press that he had made a mistake by including the links to the Senate Republican Caucus' political website and indicated that he would reimburse the Minnesota Senate for the cost of the printing.²⁹

²³ Robling, Wolf and Hoffman Test.

²⁴ Sviggum Test.

²⁵ Wolf and Hoffman Test.

²⁶ Sviggum Test.

²⁷ Robling Test.

²⁸ Sviggum Test.

²⁹ Sviggum Test.; Ex. 16.

29. During the March 29, 2012 prehearing conference in this matter, the parties agreed to waive the statutory requirement that an evidentiary hearing be scheduled within 90 days of the filing of the Complaint.³⁰

30. As of the date of the evidentiary hearing, the Minnesota Legislature had not been reimbursed for the cost of printing the Legislative Updates or for other costs and State resources associated with creating the Updates.³¹

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."³²

3. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part, as follows:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee,(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee,(address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to(insert name of

³⁰ See First Prehearing Order, OAH Docket 15-0320-22622-CV (March 30, 2012).

³¹ Sviggum Test.

³² Minn. Stat. § 211B.01, subd. 2; Minn. Laws 2004 ch. 293, art. 3 § 1.

candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.³³

4. The burden of proving the allegations in the Complaint is on the Complainant. The standard of proof for a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.³⁴

5. The Legislative Updates are "campaign material" within the meaning of Minn. Stat. § 211B.01, subd. 2.

6. The Legislative Updates did not substantially comply with the disclaimer requirement contained in Minn. Stat. 211B.04.

7. The Complainant failed to establish by a preponderance of the evidence that Respondent MNSRC participated in the preparation or dissemination of the Legislative Updates.

8. The Complainant has demonstrated by a preponderance of the evidence that Respondents Senator David Senjem, Senator Al DeKruif, Senator Chris Gerlach, Senator Gretchen Hoffman, Senator Benjamin Kruse, Senator Ted Lillie, Senator Claire Robling, Senator Ray Vandeveer, Senator Pam Wolf, Senator Michelle Fischbach, Senator John Pederson, and Senate Republican Caucus Communications Director Steve Sviggum violated Minn. Stat. § 211B.04 by preparing or disseminating campaign material that did not substantially comply with the disclaimer requirement.

9. Respondent Senators shall pay a fine of \$75 each for their violations.

10. Respondent Steve Sviggum shall pay a fine of \$200 for his violation.

11. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

³³ Minn. Stat. § 211B.04; Minn. Laws 2010 ch. 397, § 15. The amendment is applicable to campaign material "prepared and disseminated" on or after June 1, 2010.

³⁴ Minn. Stat. § 211B.32, subd. 4.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS HEREBY ORDERED:

1. The Complaint is DISMISSED as to Respondent MNSRC.
2. That having been found to have violated Minn. Stat. § 211B.04, Respondents Senator David Senjem, Senator Al DeKruif, Senator Chris Gerlach, Senator Gretchen Hoffman, Senator Benjamin Kruse, Senator Ted Lillie, Senator Claire Robling, Senator Ray Vandever, Senator Pam Wolf, Senator Michelle Fischbach, and Senator John Pederson shall each pay a civil penalty of \$75 by **November 30, 2012**.³⁵
3. That having been found to have violated Minn. Stat. § 211B.04, Senate Republican Caucus Communications Director Steve Sviggum shall pay a civil penalty of \$200 by **November 30, 2012**.

Dated: August 31, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

s/Timothy J. O'Malley
TIMOTHY J. O'MALLEY
Administrative Law Judge

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

³⁵ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

MEMORANDUM

Campaign material is defined to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”³⁶ Campaign material is required, under Minn. Stat. § 211B.04(a) and (b),³⁷ to include a disclaimer identifying the name and address of the person or committee that prepared and disseminated the material. Any person who prepares or disseminates campaign material that does not prominently include a disclaimer substantially in the form provided in § 211B.04(b) is in violation of the statute.

The definition of “campaign material” requires three tests to be met. First, the item in question must be “literature, publication[s], or material.” The Legislative Updates fall within these broad categories. Second, the material must be disseminated. The Legislative Updates were disseminated at the Republican Party precinct caucuses. Finally, the material must be disseminated for the purpose of “influencing voting at a primary or other election.” The question that this case presents is whether the purpose of the Legislative Updates was to influence voting at a primary or general election.

The Respondents maintain that the Legislative Updates were not campaign material disseminated for the purpose of influencing voting in an election, but were merely constituent communications that did not require a disclaimer. Respondents assert that the key element in determining whether something is campaign material is the intent of the speaker, and argue that they lacked the required intent to influence voting when they disseminated the Updates at their precinct caucuses. The Respondents insist that the inclusion of the links to MNSRC, the “political arm” of the Senate Republican Caucus, was nothing more than a formatting error by a staff person in the Senate Republican Communications Department.

The record established that the Legislative Updates were specifically prepared for and distributed at the Republican Party Precinct Caucuses, as opposed to a general communication to all constituents. Precinct caucuses are inherently political events. All three Senators who testified acknowledged that precinct caucuses are part of the election process. Attendees at party precinct caucuses elect delegates to represent their precinct at the district convention. District convention delegates in turn elect delegates to the party’s state convention and influence which candidates and policy positions their party endorses.

The Legislative Updates highlighted the legislative accomplishments of the Republican Senate majority in 2011, discussed proposed legislative initiatives for the 2012 session, criticized the Democratic Governor, and thanked those attending the precinct caucuses for their involvement. While the Updates did not advocate the re-election of the individual Senators, they prominently displayed the MNSRC logo and links to MNSRC’s social media accounts and website which, at the time the Updates

³⁶ Minn. Stat. § 211B.01, subd. 2.

³⁷ Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2.

were disseminated, included pages soliciting financial contributions to the Senate Victory Fund and volunteers to support the election of Republican candidates for the Minnesota Senate.³⁸

In *Gadsden v. Kiffmeyer*³⁹, this Office found a document similar to the Legislative Update to be campaign material. The document was entitled “Legislative Review,” was prepared and distributed by Representative Mary Kiffmeyer, and contained various “articles” addressing Representative Kiffmeyer’s legislative work and policy positions. Even though the Legislative Review did not include any reference to the coming election or encourage recipients to vote in a particular manner, the Panel concluded that the Legislative Review was disseminated for the purpose of influencing voting.

Based on the evidence in this case, the Panel likewise concludes that the Legislative Updates were disseminated at the precinct caucuses for the purpose of influencing voting in the coming election and constitute campaign material within the meaning of the statute. The content of the Updates and the fact that they were distributed only at Republican precinct caucuses, coupled with the inclusion of the MNSRC logo and web addresses and the statement encouraging continued involvement with MNSRC and its efforts to elect Republican Senators is sufficient to establish by a preponderance of the evidence that the Updates were disseminated for the purpose of influencing voting. As a result, the Updates were required to carry a disclaimer pursuant to Minn. Stat. § 211B.04.

The Panel rejects the Respondents’ assertion that the Complainant is required to prove that the subjective intent of the person or persons who prepared the material was for the purpose of influencing voting at a primary or other election. Such an interpretation would require a different and higher standard of proof than that contained in § 211B.04.⁴⁰ Rather, the Panel concludes that it is appropriate to infer intent using an objective standard based on the totality of the circumstances,⁴¹ including the text of the material and the audience for whom it was specifically prepared. In this case, the Legislative Updates were requested by the Executive Committee of the Republican Caucus for distribution at the Republican Party precinct caucuses. The text of the Updates included prominent links to the Senate Republican Caucus’s political unit (MNSRC or Senate Victory Fund) and those links led readers to websites soliciting contributions and volunteers to help elect Republican candidates. While the inclusion of the MNSRC logo and links may have been due to an inadvertent or negligent error on the part of the Communications Department staff person, it nevertheless resulted in overtly political material being distributed at the Republican Party precinct caucuses.

³⁸ Exs. 14-15.

³⁹ OAH Docket No. 3-0320-21690-CV (Nov. 1, 2010).

⁴⁰ For example, to establish a violation of Minn. Stat. § 211B.06, which prohibits the *intentional* participation in the preparation and dissemination of false campaign material, a complainant must show by clear and convincing evidence that the person either knew the material was false or communicated it with reckless disregard as to whether it was false. In contrast, the standard of proof for all other violations of chapters 211A or 211B (including § 211B.04) is a preponderance of the evidence and proof of an intentional or knowing violation of § 211B.04 is not required.

⁴¹ See, *State v. Marsyla*, 269 N.W.2d 2, 5 (Minn. 1978); *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). See also, *Kiffmeyer*, OAH Docket No. 3-0320-21690-CV (Nov. 1, 2010).

Based on these circumstances, the Panel concludes that the Complainant has established by a preponderance of the evidence that the Legislative Updates were prepared and disseminated for the purpose of influencing voting.

The Legislative Updates did not substantially comply with the disclaimer requirement. The purpose of the disclaimer requirement is to identify who prepared and disseminated the campaign material.⁴² It is impossible when looking at the Legislative Updates to determine who prepared and disseminated them. The material is titled “Senate GOP Legislative Update” and includes the Seal of the State of Minnesota, the name and photo of the individual senator, and the logo and web addresses for the MNSRC, along with the statement: “We appreciate your involvement and hope you will keep in touch.” Without a disclaimer, an individual must guess which person or entity prepared and disseminated the Update.

Because the Respondent Senators and Mr. Sviggum prepared or disseminated campaign material that lacked the required disclaimer, they violated Minn. Stat. § 211B.04. The Panel concludes that while the violation appears to have been inadvertent and isolated on the part of the named Respondents, it was nonetheless a violation. Because the Legislative Updates were disseminated in February, the impact on voters was probably minimal. The Panel finds that a civil penalty of \$75 for each of the Respondent Senators and \$200 for Mr. Sviggum is appropriate. The higher penalty assessed to Mr. Sviggum reflects, in part, the public resources (staff time and State supplies) that were expended in creating the Updates, as well as his ultimate responsibility for the Updates as the Director of the Senate Republican Caucus Communications Department.

B.L.N., T.J.O., M.J.C.

⁴² *Hansen v. Stone*, OAH Docket No. 4-6326-16911-CV (October 28, 2005).